

(2013) 07 DEL CK 0407
In the Delhi High Court
Case No : Writ Petition (C) 7494 of 2011

Viveka Nand

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0407

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : T.D. Yadav, for the Appellant; Charu Ambwani, Advocate and Mr. Prashant Kumar, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The short question which arises for our consideration in this writ petition is, whether the petitioner is entitled to pay protection on his appointment on regular basis as Data Entry Operator-Grade-II with the Central Pollution Control Board, respondent No. 2. The relevant facts are that the petitioner was initially engaged as a Stenographer on daily wages with the respondent No. 2 on January 24, 1990. With effect from January 24, 1996 the appointment of respondent No. 2 was changed to Stenographer on ad-hoc basis and he was granted the scale of Rs. 1200-2040 and the pay was fixed at Rs. 1200. Pursuant to the recommendations of the 5th Central Pay Commission, the pay of the petitioner was revised to Rs. 4000-6000 and the pay was fixed at Rs. 5200.

2. On May 26, 2008 the respondents advertised the post of Data Entry Operator Grade II in the scale of Rs. 4000-6000. Pursuant to the selection process the petitioner was appointed as Data Entry Operator Grade II with effect from October 27, 2008. It so happened that even after his appointment as Data Entry Operator Grade II he was continued to be paid the pay he was drawing as a Stenographer (ad-hoc) i.e. Rs. 10410+2400 till August 12, 2010 when his pay was fixed with retrospective effect i.e. October 27, 2008. It may be stated that

immediately after his appointment as Data Entry Operator Grade II petitioner started making representations vide his letters dated October 27, 2008, November 14, 2008, March 18, 2009, June 23, 2009 and October 08, 2009 for protecting his pay as being drawn as Stenographer (ad-hoc). The said representations were decided by the authorities of respondent No. 2 by way of a letter dated August 12, 2010 by stating as under:

(a) That he has appointed to the post of Stenographer (adhoc) from 24.01.1996 to 26.10.2008.

(b) That employees appointed on or after 01.01.2006 are covered under New Pension Scheme of the Central Government.

(c) That he has been appointment as DEO Gr-II w.e.f. 27.10.2008 (i.e. after 01.01.2006). His service as DEO Gr-II is covered under New Pension Scheme already exists in CPCB.

(d) Since, he has switched over from the post of Stenographer (adhoc) to the post of DEO Gr-II due to which the benefit of pay protection cannot be extended to him under the prevailing rules.

3. Apart from the office orders dated August 12, 2010, the respondents had issued an office order dated November 15, 2010 whereby it was decided to pay encashment of 244 days earned leave to the petitioner for the period of his services rendered between January 24, 1996 to October 26, 2008 as Stenographer (ad-hoc).

4. The petitioner filed Original Application No. 87/2011 impugning the order dated August 12, 2010 along with corrigendum dated August 17, 2010 and November 15, 2010 before the Tribunal. The contention of the petitioner before the Tribunal was that he had applied for the post of Data Entry Operator Grade-II through proper channel and he was selected. His request for protection of pay which he was drawing as Stenographer (ad-hoc) was not acceded to as he was holding the post of Stenographer on ad-hoc basis. The respondent on the other hand would contest the claim of the petitioner on the ground that the appointment of the petitioner as a Data Entry Operator is a fresh appointment and there are no rules/instructions which allow protection of pay in such cases. The petitioner has also made a claim of discrimination inasmuch as he named 4 employees who according to them were given the benefit of pay protection namely Mr. Suresh Chander Sharma, Mr. K.V. Srivastava, Ms. Sushma Dutta, Mr. Bhawat Singh Shahi and Ms. Farzana Khan. The Tribunal after considering the rule position more specifically FR-27 was of the following view.

From the aforesaid, it may be seen that the pay of a direct recruit to a post in the time scale of pay for the first time is generally made at the minimum pay scale unless he has been granted an advance increment by the Selection Committee. There is also provision of pay protection where a person is appointed to a substantive capacity carrying the duties and responsibilities of greater

importance than those attaching to the post held by him. However, where the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, one would draw his initial pay on the minimum of time scale which is held by him on regular basis. If these conditions are not fulfilled, one would draw as initial pay on the minimum of time scale.

Having bestowed our careful consideration and perusal of the record, we do not find any infirmity in the impugned order. Nor do we find any ground to grant of reliefs prayed for by the applicant in the application. The application is dismissed. No order as to costs.

5. Mr. T.D. Yadav, learned counsel for the petitioner would reiterate his submission as made by him before the Tribunal. When the writ petition came up for hearing on July 09, 2013 Mr. T.D. Yadav had placed before us a copy of order dated March 19, 2012 in respect to one Mr. Suresh Chander Sharma (Data Entry Operator Grade II). Vide the said order Mr. Suresh Chander Sharma was given the benefit of pay protection on his regular appointment as Data Entry Operator Grade II with effect from October 27, 2008 at Rs. 10410.

6. We had asked the learned counsel appearing for the respondents to seek instructions in regard to the office order dated March 19, 2012. Learned counsel for the respondents would submit that the case of Mr. Suresh Chander Sharma Data Entry Operator Grade-II is different from the case of the petitioner. According to her Mr. Suresh Chander Sharma, before his regular appointment as Data Entry Operator Grade II, was given the benefit of temporary status in terms of DoP&T circular dated September 10, 1993. She would further submit that those persons who had the benefit of temporary status, before regular appointment, their pay on such regular appointment has to be fixed in terms of the DoP&T O.M. dated May 09, 2008, which O.M. relates to fixation of pay of casual labourers (temporary status) on their regularization. This O.M. stipulates that the pay of casual labourers with temporary status on their regularization against Group D posts in identical grades will be fixed after taking into account the increment already earned by them in the Group D pay scale which was taken into account for payment of wages while working as casual worker with temporary status.

7. On this Mr. T.D. Yadav would submit that Mr. Suresh Chander Sharma could not have been granted temporary status as the same is applicable to Group D cadre. If he could not have been given the benefit of temporary status, his pay could not have been protected in terms of O.M. of May 09, 2008.

8. We do not intend to go into the issue as to whether Mr. Suresh Chander Sharma was rightly granted the benefit of temporary status, as such an issue is not the subject matter of the Original Application. Suffice would it be to state that the Tribunal in its impugned order had noted the plea of discrimination in para No. 10 of the impugned order which is reproduced as under:

The learned counsel for the respondents submitted the case file relating to adhoc

appointment of the applicant as Stenographer and his personal files for our perusal. On a careful perusal of these files, it is noted that the respondents have been quite considerate to the applicant and have explored all the possibilities to extend the benefits of pay protection to the applicant but the same has not been found to be feasible in accordance with rules. It is further noted that the file of other employees along with S/Shri Suresh Chand Sharma, K.V. Srivastava, Smt. Sushma Dutta, Shri Bhawat Singh Sahi and Smt. Farzana Khan who had also worked in the different cadres (on temporary status, casual project employees) in the Respondent Board prior to their appointments as Data Entry Operator Gr. II. The cases of these employees for pay protection have been dealt with separately and the same have been turned down by the competent authority.

9. Further we may state that the learned counsel for the petitioner has not pointed out any rule which supports the case of the petitioner for pay protection. Even in the impugned order the Tribunal has in detail dealt with F.R. 22 and F.R. 27 before coming to the conclusion that where the appointment to the new post does not involve assumption of duties and responsibilities of greater importance one would draw his initial pay on the minimum of time scale which is held by him on regular basis.

10. No other submission is made by Mr. T.D. Yadav.

11. We find no merit in the writ petition. The same is dismissed. No costs.